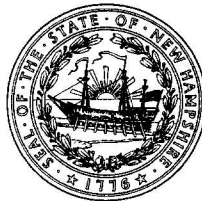


**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

PETER W. HEED  
ATTORNEY GENERAL



KELLY A. AYOTTE  
DEPUTY ATTORNEY GENERAL

June 1, 2004

VIA UPS NEXT DAY      Section 5 Submission

Chief, Voting Section  
Civil Rights Division  
Room 7254 – NWB  
Department of Justice  
1800 G. St., N.W.  
Washington, DC 20006

Re:    Submission Under Section 5 of the Voting Right Act for:  
      Redistricting of New Hampshire State House Districts

Dear Voting Section Chief:

Pursuant to 42 U.S.C. §1973(c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits a redistricting plan for the New Hampshire State House districts, a "change affecting voting" for pre-clearance review by the United States Attorney General.

**REQUEST FOR EXPEDITED CONSIDERATION**

The period for candidates to file for the office of State Senator runs from June 2, 2004 to June 11, 2004. New Hampshire Revised Statutes Annotated ("RSA") 655:14, RSA 655:20. The New Hampshire Supreme Court has enjoined the filing period. See Exhibit N, Order dated May 28, 20004. Pursuant to 28 CFR §51.34 the State of New Hampshire requests expedited consideration. This redistricting plan became effective on May 28, 2004. This submission is being timely submitted.

Should the State be prohibited from allowing candidates to file for office in accordance with the statutory timeline because the changes to State House redistricting have not yet received Voting Rights Act pre-clearance, it would be disruptive to New Hampshire's election process. State action to delay the filing period would itself be a "change affecting voting," itself subject to pre-clearance, triggering further delay and confusion. We therefore request that this submission receive expedited consideration and that a notice of a decision not to object pursuant to 28 C.F.R. §51.41 be sent to the State of New Hampshire as soon as possible.

## SUBMISSION

In accordance with 28 C.F.R. §51. 27, the submission is as follows:

(a) Exhibit A. A copy of House Bill 1292 (2004) as enacted by the New Hampshire legislature and signed into law by the Governor on April 5, 2004 amending RSA 662:5 which divides the State of New Hampshire into four hundred Representative districts.

(b) Exhibit B. A copy of *Burling v. Chandler*, 148 N.H. 143 (2002), the decision of the New Hampshire Supreme Court which established the districting plan which is being changed by House Bill 1292 (2004).

(c) House Bill 1292 affects only two covered jurisdictions, Stratford and Pinkham's Grant, both located in Coos County. Under the court ordered *Burling* plan Pinkham's Grant and Stratford were part of House District 2, which had a deviation of -2.60%. The ideal population for a single member district is 3089.

House Bill 1292 places Stratford in District Coos 2, which has a deviation of -1.68%. This change in deviation of 1.08% does not have a retrogressive effect on the voting rights of the protected class members who reside in Stratford. The Census reports a 2000 population for Stratford of 942 persons, 40 of whom are non-white and may be members of a protected class.

House Bill 1292 places Pinkham's Grant, population 0, in District Coos 3, which has a deviation of 6.12%. Pinkham's Grant has no inhabitants based on the 2000 census, therefore, this change can not have a retrogressive effect on the voting rights of protected class members.

House Bill 1292 partially redistricts the State of New Hampshire. This is the first redistricting completed by the New Hampshire Legislature since the 2000 census. House Bill 1292 renames all districts and expands the number of districts statewide from 88 to 103, primarily by splitting larger districts into smaller districts.

The remaining covered jurisdictions of Antrim, Benton, Boscawen, Millsfield, Newington, Ringe, Stewartstown, and Unity, however, are not affected, other than the name of the district being changed. The name change from a statewide numbering scheme to one that numbers the districts by county does not have any affect on the voting rights or power of any voters.

(d) This submission is made by Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, phone number (603) 271-1238.

(e) This submitting authority is New Hampshire Attorney General Peter W. Heed for the State of New Hampshire.

(f) Not applicable.

(g) The change for which pre-clearance is sought was made by an act of the New Hampshire General Court, the State's Legislature.

(h) The New Hampshire General Court, the State's Legislature, acted pursuant the New Hampshire Constitution Part Second Articles 9, 11 and their general lawmaking powers set forth in Part Second Article 5. The bill changing RSA 662:5 and replacing the court ordered *Burling* plan was approved by the Governor of the State of New Hampshire pursuant to the New Hampshire Constitution Part Second, Article 44. The procedures followed are the typical procedures for adopting a law.

(i) The final adoption of House Bill occurred on March 17, 2004, the date it was passed in the New Hampshire Senate, the Governor signed the bill into law on April 5, 2004.

(j) House Bill 1292 had contingent effective dates. The contingency provided that it became effective on the date House Bill 264 becomes effective. Alternatively if House Bill 264 was not adopted it would have become effective sixty days after its passage. House Bill 264, the redistricting bill for the New Hampshire Senate, became effective on May 28, 2004 therefore House Bill 1292 became effective on May 28, 2004.

(k) The changes made by House Bill 1292 have not yet been enforced.

(l) House Bill 1292 redistricts portions of the state affecting only 35.8% of the state's population, 21 of the 88 house districts (23.8%) established by the court in *Burling* decision, or 129 of the 400 House seats (32.25%). House Bill 1292 also

changes the name of each House district in the State, the renaming has no effect on voting rights or power.

(m) The changes made by House Bill 1292 (2004) were made to adjust the State House Districts to reflect changes in the distribution of the population in New Hampshire as reflected by the 2000 federal census, and to reduce the number of large multi-member House districts created by the court order in the *Burling* case.

(n) The changes made by House Bill 1292 (2004) have no anticipated effects on members of racial or language minority groups statewide, and specifically are expected to have no effect on the racial or language minority groups residing in the ten jurisdictions covered by section 5 of the Voting Rights Act. Only one covered jurisdiction containing inhabitants is affected and the effect is a change in that town's district population such that the deviation from an ideal district population changes from -2.60 to -1.68.

(o) A Petition for Original Jurisdiction challenging the enactment of House Bill 1292 has been filed with the New Hampshire Supreme Court. *See Below v. New Hampshire Secretary of State*, attached as Exhibit C. The Petitioners challenge (A) the authority of the Legislature under the New Hampshire Constitution to redistrict following a redistricting ordered by the State Supreme Court; (B) whether the deviation from the ideal district sizes in the districts created by House Bill 1292 violate the United States Constitution; (C) whether the deviation from the ideal district size for House districts violates the New Hampshire Constitution; (D) not applicable to this submission – a parallel challenge to the State Senate redistricting; (E) whether the State is barred from conducting candidate filing because House Bill 1292 has not yet been precleared; (F) whether the new districts are barred because of an alleged failure by the Legislature to follow census tracts when it established districts.

Issue (A) is not relevant to this submission. Whether the Legislature's authority to redistrict is limited to one redistricting following the decennial census and, if so, whether a court ordered redistricting constitutes the only Legislative redistricting allowed during that ten year period is not pertinent to the change affecting voting being submitted for preclearance.

Issue (B) is not relevant to this submission. The size of the House district for only one jurisdiction containing inhabitants is changed by House Bill 1292. That change, as described above, is *de minimus*. Whether changes to districts that do not contain covered jurisdictions result in an impermissible range of deviation is not pertinent to the covered jurisdictions. Furthermore, the New Hampshire Supreme Court in *Burling* recognized the unique character of New Hampshire House districts. *Burling*, 148 N.H. at 484-85. Due to the large size of New Hampshire's House, 400

Representatives, and the State's relatively small population the application of the 10% (*Brown v. Thompson*, 462 U.S. 835, 842-43 (1983) or 16.4% (*Mahan v. Howell*, 410 U.S. 315, 319 (1973) range of deviation standards have an exaggerated effect. 10% of the ideal population of 3089 is only 309 people. The House Bill 1292 redistricting plan has a mean deviation of 2.63% and a range of deviation of 14.8%.<sup>1</sup>

Issue (C) is not relevant to this submission. This is a State Constitutional question; whether the State Constitution is less tolerant of deviation in district size than the Federal Constitution.

Issue (D) poses the same question as (C) relative to State Senate districts, and as this submission is limited to House districts, it is not pertinent.

Issue (E) is about this submission, and addresses whether candidate filing must be enjoined during the period between submission and non objection. Expedited consideration of this submission will moot this issue.

Issue (F) is not pertinent to this submission. Issue (F) addresses city ward redistricting in Nashua, a New Hampshire city that is not subject to preclearance. Petitioners allege that a newly drawn ward line fails to follow census tract lines making the determination of the population according to the census unknowable. The resolution of these disputed facts and legal questions do not effect any jurisdiction subject to preclearance, therefore, the issue is not pertinent to this submission.

There is no other known past and no other pending litigation concerning the changes for which preclearance is being sought.

(p) The Department of Justice precleared the court ordered *Burling* plan. The non-objection letter is stamped September 5, 2002. Exhibit D. The procedure for the adoption of the change, the enactment of laws by the New Hampshire General Court with approval by the Governor, is not subject to preclearance as it is the same process that was in effect prior to 1968.

(q) §51.28 (a)(1) - A data file conforming to the specifications of §51.28 (5) describing the census tracts in each State House District is contained on the enclosed floppy disk as Exhibit E. Census data is attached at Exhibit F.

The previous districting scheme, the *Burling* court ordered plan and the House Bill 1292 change to the two covered jurisdictions are both based on the 2000 census. Under the 2002 *Burling* plan District 2 had a population of 13,454 and the district had

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<sup>1</sup> Calculations are based on city ward populations reported by city officials. Petitioners in *Below v. New Hampshire Secretary of State* allege that post census redistricting of city wards has created uncertainty as to the validity of these population figures. None of the city wards at issue are subject to preclearance.

five seats. The total population for this district under House Bill 1292, now named District Coos 2, is 12,149 and there are 4 seats.

As the population for Pinkham's Grant is 0, no data is presented relative to Pinkham's Grant.

Voting Age population is presented in the data files, contained in Exhibit E.

§51.28 (b)(1) – Exhibit G is a map of the State House districts before the change and Exhibit H is a map of the State House districts after the change.

(r) Other Information.

§51.28 – (a) (2) Registered Voter information is available only in the aggregate, no data is available from state sources by race or language groups. Exhibit I is a table showing the number of registered voters by voting precinct (town or city ward) for Coos County, that includes data on the two covered jurisdictions that are affected by the change being submitted for preclearance.

§51.28 (a)(3) Other than the data in the census reports, the submitting authority is not aware of any estimates being made of the population by race or language group as part of the redistricting process. It is noteworthy that, aggregating the ten towns subject to section 5 of the Voting Rights Act, the largest single race or language minority group consists of less than 1 percent of the population and all of the protected group members combined constitute 511 people or 3.2 percent of the total population of the ten towns.

New Hampshire is racially homogeneous. Statewide, census statistics report the population is 96% white. Because the non-white population is evenly distributed throughout the State, shifts in State House district lines have virtually no effect on protected class members statewide. The census tract with the largest population of non-whites is Hanover CDP, home of the State's Ivy League College – Dartmouth, with 14.7 percent of the population belonging to a race category other than white. Only thirteen census jurisdictions have less than 95 percent white population. See Exhibit J, a chart showing the percentage of the population which is white by census jurisdiction, and exhibit K a table of the census data on which the chart is based. The size of the non-white population in New Hampshire is so small and so evenly distributed throughout the State that it is impossible to create any minority majority State House districts that affect covered jurisdictions. The shifting of district lines effected by House Bill 1292 does not have any compacting or dilution effects.

§51.28 (b)(3) As discussed above and reflected in Exhibits J and K the location of racial and language minority groups is evenly distributed across the State. Other than the data provided by the Census, no maps have been created as part of the

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redistricting process, to the knowledge of the submitting authority, that identify the location of racial or language minority groups.

§51.28 (c) – not applicable

§51.28 (d) & §51.28 (e) Not applicable as the change made by House Bill 1292 (2004) does not affect the electoral influence of a racial or language minority group for the reasons explained above.

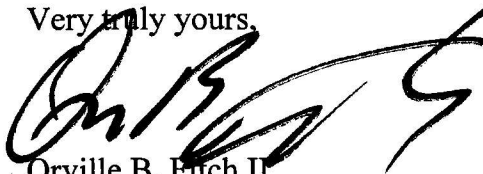
§51.28 (f) The changes made by House Bill 1292 (2004) have not been controversial in terms the effect on race or language minority groups. See Exhibit L, Docket for House Bill 1292 showing the dates of the Legislative hearings and public votes on this bill. The changes made by House Bill 1292 (2004) have been controversial within New Hampshire only to the extent that there has been debate as to whether the New Hampshire Constitutional imposes a greater limitation on deviation in population between districts or on political gerrymandering than does the federal constitution.

§51.28 (g) Exhibit M. Press Release on this submission and its availability.

§51.28 (h) Not applicable.

I trust the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please do not hesitate to contact me.

Very truly yours,



Orville B. Fitch II  
Assistant Attorney General  
Civil Bureau  
(603) 271-1238

OBf/jsh



### Table of Exhibits

- Exhibit A - A copy of House Bill 1292 (2004), the new creating the change.
- Exhibit B - A copy of *Burling v. Chandler*, 148 N.H. 143 (2002), the order creating the districting being changed.
- Exhibit C - Petition challenging House Bill 1292 (2004) *Below v. New Hampshire Secretary of State*
- Exhibit D - *Burling* plan DOJ non-objection letter, evidence prior redistricting was precleared.
- Exhibit E - Floppy disk(s) with the data files. (This Exhibit is not included and will be submitted under separate cover.)<sup>2</sup>
- Exhibit F - Census Data.
- Exhibit G - Map of districts before the change.
- Exhibit H - Map of districts after the change. (This Exhibit is not included and will be submitted under separate cover.)
- Exhibit I - Registered Voters data for Coos County.
- Exhibit J - Line chart showing NH 95% white - distribution among jurisdictions is relatively even.
- Exhibit K - Table showing data used to make Exhibit J.
- Exhibit L - Docket for House Bill 1292 showing public hearings and votes leading up to its adoption.
- Exhibit M - Press Release giving notice of the availability of this submission for review and inviting comments to the Federal Department of Justice.
- Exhibit N - New Hampshire Supreme Court Order, dated May 28, 2004 enjoining the filing period.

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<sup>2</sup> The redistricting being submitted for preclearance is a partial redistricting of a Court ordered redistricting based on the 2000 census. The redistricting process utilized census data aggregated in that process by town and ward. On information and belief, maps were not drawn and census tract level electronic data files were not generated. The submitting authority is having these exhibits prepared and they will be submitted as soon as they are available. The census data necessary for this filing is addressed in the description of the changes being made.